

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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|----------------------------|---|----------------------|
| GAIL SACCO, et al., |) | |
| |) | |
| Plaintiffs, |) | 2:06-CV-0714-RCJ-LRL |
| |) | 2:06-CV-0941-RCJ-LRL |
| vs. |) | |
| |) | |
| CITY OF LAS VEGAS, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

ORDER

This matter comes before the Court on Plaintiffs’ Motion for Summary Judgment (#51) and Defendants’ Counter-Motion for Summary Judgment (#58). Plaintiffs contest the constitutionality of Las Vegas City ordinances regulating public park use. The Court has considered the motions, the pleadings on file, and oral argument on behalf of all parties. Pursuant to the following analysis, Plaintiffs’ Motion for Summary Judgment (#51) is denied, and Defendants’ Counter-Motion for Summary Judgment is granted.

BACKGROUND

On June 12, 2006, Plaintiffs, comprised of various political and religious activists, filed a Complaint challenging the constitutionality of the City of Las Vegas’s (“City”) group event permitting system, designation of three parks for children’s only use, and trespass policy. (#1 to 2:06-CV-0714) (“714 case”). On August 2, 2006, the same Plaintiffs filed another Complaint seeking to overturn the City’s ordinance banning the feeding of the indigent in City parks. (#1 to 2:06-CV-0941) (“941 case”). The 941 case was consolidated with the 714 case on October 27, 2006.

1 On January 26, 2007, the Court entered a preliminary injunction declaring Las Vegas
2 Municipal Code 13.36.055, which outlawed feeding the indigent in city parks, unconstitutional
3 for vagueness. (#49.) Plaintiffs now ask the Court to: (1) enter a permanent injunction against
4 LVMC 13.36.055; (2) declare the City's permitting system for group use of City parks
5 unconstitutional under the First Amendment; (3) declare the City's establishment of three
6 Children's Parks unconstitutional under the Equal Protection Clause of the Fourteenth
7 Amendment; and (4) declare the City's trespassing policy unconstitutional under the Due Process
8 Clause.

9 The City of Las Vegas has sixty-seven operating parks. These parks range from large
10 regional parks to small neighborhood parks. Some parks are dedicated to specific uses such as
11 softball fields, water activities, skating, children's play, and dog recreation.

12 Under the Las Vegas Municipal Code, park events involving more than twenty-five
13 persons require a permit. The City has set aside fifteen parks for possible group use. LVMC
14 13.36.080 governs the issuance of permits for group use:

15 Any person who desires to use any park or recreational facility of the City for a
16 group of twenty-five individuals or more, or any person who desires to conduct
17 some event in which it could reasonably be assumed that twenty-five or more
persons might gather at a park or recreational facility of the City to participate in
or witness such event, shall first apply and obtain a permit from the Director.

18 The ordinance does not apply to "any event which is sponsored by the Department. *Id.* The City
19 may deny a group permit to: (1) protect the use and enjoyment of the park for other members of
20 the public; (2) protect the health and safety of park visitors; (3) ensure adequate parking and
21 sanity facilities to accommodate park users; (4) protect park grounds from damage or overuse;
22 (5) ensure the park and surrounding area are kept clean; and (6) make sure that group use does
23 not disturb or annoy neighbors of the park. LVMC 13.36.090. The majority of permits are for
24 social events such as company picnics and family parties. Some permits have been issued for

1 expressive events, but the City maintains it has never received an application for a permit for the
2 express purpose of feeding the homeless. The City does not make any content-based review of
3 applications. Applications are rarely denied; most denials result from the existence of a prior
4 permit for the same facility.

5 The City also has a permitting scheme for “special events,” which Plaintiffs also
6 challenge. Although LVMC 13.36.132 defines special events as events involving twenty-five
7 or more persons, the Department of Leisure has administratively defined a special event as one
8 involving more than 400 people, requiring an admission charge, or involving the use of stages
9 or bartering. Applications for group or special event use must be submitted fourteen days prior
10 to the planned event and require a \$50 minimal fee. An applicant who is denied a group use or
11 special event permit may appeal to the Las Vegas City Council under LVMC 13.36.100.
12 Plaintiffs contend that these permitting ordinances violate their First Amendment rights by
13 restricting their access to a public forum.

14 On July 12, 1999, the City set aside three parks for the use of small children, James Gay
15 Park, Ethel Pearson Park, and the Fitzgerald Tot Lot. This resolution was passed pursuant to
16 findings that these parks were being overrun by alcohol and drug use, sexual activity, sleeping,
17 and other activities inconsistent with children’s use and enjoyment. (*See* Ex. 8 to #54.) LVMC
18 13.36.070 provides that: “[N]o person over the age of twelve years, other than a parent, guardian
19 or other responsible person accompanying a child of the age of twelve years or younger, shall
20 visit, frequent, be present in or loiter around any park which is designated . . . as a children’s
21 park.” Plaintiffs also seek to overturn this ordinance as violative of their First Amendment and
22 Equal Protection rights.

1 248 (1986). When the nonmoving party bears the burden of a claim or defense at trial, the
2 moving party can meet its initial burden on summary judgment by showing that there is an
3 absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 325.
4 Conversely, when the moving party bears the burden of proof at trial, then it must establish each
5 element of its case at summary judgment.

6 DISCUSSION

7 I. Permanent Injunction Against LVMC 13.36.055

8 Plaintiffs first ask the Court to reaffirm that LVMC 13.36.055 is unconstitutional and
9 enter a permanent injunction enjoining its enforcement. LVMC 13.36.055 bars the feeding of
10 the indigent in city parks. On January 26, 2007, the Court entered a preliminary injunction
11 declaring the ordinance void for vagueness. (#49.) Additionally, the Court retained jurisdiction
12 for adjudication of any amended ordinance and provided the City with instructions on how to
13 revise the ordinance to cure its constitutional defects. The City has not modified the ordinance
14 and stated at oral argument that it had no intention of doing so. On the assumption that this
15 Order represents a final adjudication of the case, the Court enters a permanent injunction against
16 enforcement of LVMC 13.36.055. However, if Plaintiffs later challenge a revised version of the
17 homeless feeding ordinance, this Court retains jurisdiction to evaluate the validity of such
18 ordinance.

19 II. Group Use and Special Event Permitting Ordinances

20 Plaintiffs contend that the City group use and special event permitting ordinances violate
21 the Free Speech Clause of the First Amendment, the Equal Protection Clause of the Fourteenth
22 Amendment, and the vagueness protections contained within the Due Process Clause of the Fifth
23 and Fourteenth Amendments. They seek to void the ordinances in both facial and as-applied
24 challenges. Each of their constitutional arguments fail.

1 **A. First Amendment Challenge**

2 Plaintiffs' principal argument is that the group permitting ordinances violate protected
3 First Amendment speech, both facially and as applied. Previous cases analyzing permit
4 restrictions in public parks have applied the time, place, and manner test under the First
5 Amendment and held that the laws must be: (1) content-neutral; (2) narrowly tailored to serve
6 a significant government interest; and (3) leave open ample alternate channels of expression. *See*
7 *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Under controlling case law, Plaintiffs'
8 facial and as-applied challenges both fail.

9 **1. Facial Challenge**

10 The Supreme Court recently considered a facial challenge to an almost identical Chicago
11 ordinance requiring permits for group events in city parks and upheld the ordinance in response
12 to the same arguments the Plaintiffs now advance. In *Thomas v. Chicago Park District*, 534 U.S.
13 316 (2002), the Court examined an ordinance that required a permit in order to "conduct a public
14 assembly, parade, picnic, or other event involving fifty individuals." The ordinance also
15 provided similar grounds for denial as found in the present Las Vegas ordinance. *Id.* at 319. The
16 Court rejected the protestors' challenge to the regulation, including their argument that
17 heightened scrutiny applied, stating:

18 We reject those contentions. *Freedman* is inapposite because the licensing
19 scheme at issue here is not a subject-matter censorship but content-neutral time,
20 place, and manner regulation of the use of a public forum. The Park District's
21 ordinance does not authorize a licensor to pass judgment on the content of
22 speech: None of the grounds for denying a permit has anything to do with what
23 a speaker might say. Indeed, the ordinance (unlike the classic censorship
24 scheme) is not even directed to communicative activity as such, but rather to *all*
25 activity conducted in a public park. The picnicker and soccer player, no less than
the political activist or parade marshal, must apply for a permit if the 50-person
limit is to be exceeded. And the object of the permit system (as plainly indicated
by the permissible grounds for permit denial) is not to exclude communication
of a particular content, but to coordinate multiple uses of limited space, to assure
preservation of park facilities, and to prevent uses that are dangerous, unlawful,

1 or impermissible under the Park District's rules, and to assure financial
2 accountability for damage caused by the event. As the Court of Appeals well put
3 it: "[T]o allow unregulated access to all comers could easily reduce rather than
4 enlarge the park's utility as a forum for speech." 227 F.3d at 924. . . .

5 We have never required that a content-neutral permit scheme regulating speech
6 in a public forum adhere to the procedural requirements set forth in *Freedman*.
7 FN2. "A licensing standard which gives an official authority to censor the
8 content of a speech differs toto coelo from one limited by its terms, or by
9 nondiscriminatory practice, to considerations of public safety and the like." . . .

10 Regulations of the use of a public forum that ensure the safety and convenience
11 of the people are not "inconsistent with civil liberties but . . . [are] one of the
12 means of safeguarding the good order upon which [civil liberties] ultimately
13 depend." *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941). Such a traditional
14 exercise of authority does not raise the censorship concerns that prompted us to
15 impose the extraordinary procedural safeguards on the film licensing process in
16 *Freedman*.

17 *Id.* at 322-23. Here, the City's group permitting ordinance is materially the same as the *Thomas*
18 ordinance. It is directed at all large groups, independent of expressive purpose, and is
19 appropriately tailored to encourage safety without violating speech rights. All parties, regardless
20 of viewpoint, are treated alike under the permitting requirements.

21 The *Thomas* Court went on to discuss the need to curb discretion in the enforcement of
22 permitting ordinances, ultimately finding the Chicago law constitutionally valid:

23 Of course even content-neutral time, place, and manner restrictions can be
24 applied in such a manner as to stifle free expression. Where the licensing official
25 enjoys unduly broad discretion in determining whether to grant or deny a permit,
there is a risk that he will favor or disfavor speech based on its content. See
Forsyth County v. Nationalist Movement, 505 U.S. 123, 131 (1992). We have
thus required that a time, place, and manner regulation contain adequate
standards to guide the official's decision and render it subject to effective judicial
review. . . .

26 As we have described, the Park District may deny a permit only for one or more
27 of the reasons set forth in the ordinance. See n. 1, *supra*. It may deny, for
28 example, when the application is incomplete or contains a material falsehood or
29 misrepresentation; when the applicant has damaged Park District property on
30 prior occasions and has not paid for the damage; when a permit has been granted
31 to an earlier applicant for the same time and place; when the intended use would

1 present an unreasonable danger to the health or safety of park users or Park
2 District employees; or when the applicant has violated the terms of a prior permit.
3 See Chicago Park Dist.Code, ch. VII, § C.5.e. Moreover, the Park District must
4 process applications within 28 days, § C.5.c, and must clearly explain its reasons
5 for any denial, § C.5.e. These grounds are reasonably specific and objective, and
6 do not leave the decision “to the whim of the administrator.” *Forsyth County*,
7 505 U.S. at 133, 112 S.Ct. at 2395. They provide ““narrowly drawn, reasonable
8 and definite standards”” to guide the licensor’s determination

9 *Id.* at 323-24. The City’s ordinance in this case similarly restricts the discretion of the
10 Department of Leisure Services. Under LVMC 13.36.090, the City may only deny a permit for
11 the reasons specified in the ordinance. These reasons are content-neutral and are substantively
12 similar to the reasons listed in the valid Chicago ordinance.

13 As LVMC 13.36.080 is factually similar to the ordinance upheld in *Thomas*, Plaintiffs’
14 facial challenge must fail as a matter of law. The City group permitting scheme is completely
15 content-neutral, requires permits for group use of twenty-five or more persons, requires decision
16 on an application within 14 days, and provides the City with a list of valid reasons for denial.
17 There are thus no material differences between the Las Vegas ordinance and the Chicago law
18 upheld in *Thomas*.

19 **2. As Applied Challenge**

20 Plaintiffs also seek to overturn the ordinance in an as-applied challenge. In an as-applied
21 challenge, Plaintiffs have the burden of showing discriminatory intent, and they have not done
22 so here. In *Thomas*, the Court stated: “Granting waivers to favored speakers (or, more precisely,
23 denying them to disfavored speakers) would of course be unconstitutional, but we think that this
24 abuse must be dealt with if and when a pattern of unlawful favoritism appears, rather than by
25 insisting upon a degree of rigidity that is found in few legal arrangements.” *Id.* at 325. The
Plaintiffs have here failed to meet their burden in proving discriminatory intent in the

1 ordinance's enforcement. There is no record demonstrating any pattern, or even specific
2 instances, of the City favoring certain kinds of speakers over others. Plaintiffs rely on statements
3 made by the City's attorney during the preliminary injunction hearing as evidence of bias, but
4 these statements are insufficient to justify a finding that the ordinances are applied in a
5 discriminatory manner on a City wide basis. Furthermore, Plaintiffs rely solely on evidence
6 relating to the now closed Huntridge Circle Park, and have not established a broader pattern of
7 discrimination as to the City park system as a whole. Without evidence of discrimination,
8 Plaintiffs' as-applied challenge must be rejected.

9 **3. Limiting Group Use to Fifteen Parks**

10 Plaintiffs contend that even if *Thomas* holds that park permitting schemes are not per se
11 unconstitutional, the City's ordinances in this case are defective because the City has only made
12 available fifteen of sixty-seven operating parks for group use. The City asserts that it limits
13 group use to a geographically diverse set of larger parks that have sufficient amenities, parking,
14 restrooms, tables, shelters, and so forth to accommodate group use. As noted previously, the
15 applicable standard for such regulations is time, place, and manner analysis.

16 In this case, the limitation to fifteen parks is clearly content neutral. *See Nat'l Council*
17 *of Arab Americans v. City of New York*, 331 F. Supp. 2d 258, 267-68 (S.D. N.Y. 2004). The
18 limitation is also narrowly tailored to serve a substantial City interest of "managing and
19 maintaining park facilities." *Id.* at 268. Regarding the narrow tailoring prong, the Ninth Circuit
20 has instructed:

21
22 A narrowly-tailored permitting regulation need not be the least restrictive means
23 of furthering a locality's asserted interests. . . . "The Requirement of narrow
24 tailoring is satisfied 'so long as the . . . regulation promotes a substantial
government interest that would be achieved less effectively absent the
regulation'" (internal citations omitted). As we have noted, local governments

1 can exercise their substantial interest in regulation competing uses of traditional
2 public fora by imposing permitting requirements for certain uses.

3 *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1038 (9th Cir. 2006).

4 Here, the City's limitation on group use to larger parks promotes its interest in balancing
5 competing group and general use of parks and protects the public use of park facilities, including
6 group and individual use for purposes of speech or expressive conduct. With fifteen parks
7 available for group use, those parties wishing to advance particular viewpoints through group
8 demonstrations have ample alternative channels of communication available to them. The
9 Plaintiffs provide no record to the contrary. Therefore, the City has not violated the First
10 Amendment in limiting group use to fifteen parks.

11 **B. Equal Protection Challenge**

12 Plaintiffs contend the City's group event ordinance violates the Equal Protection Clause
13 because it contains an explicit exemption for the Permit Code for any group use "sponsored by
14 the Department." LVMC 13.36.080. Regulatory classifications that are based on suspect classes
15 or implicate fundamental rights are evaluated under a heightened standard. *Nordlinger v. Hahn*,
16 505 U.S. 1, 10 (1992). Otherwise, the rational basis test applies and the law need only be
17 rationally related to a legitimate government interest. In this case, Plaintiffs argue that this
18 exemption triggers strict scrutiny because it implicates First Amendment rights by disfavoring
19 those groups seeking to use the parks for expressive purposes (such as protestors) and favoring
20 those sponsored by the City. If a City ordinance draws classifications that restrict First
21 Amendment rights, strict scrutiny applies and the law must be "finely tailored to serve
22 substantial [government] interests." *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 797
23 (9th Cir. 2006).

1 In this case, the group use ordinances do not facially impinge on First Amendment rights
2 or draw classifications that burden free speech. The group use ordinances seek to aid the city
3 in managing competing park uses, and do not distinguish between expressive and non-expressive
4 group use of parks. The City exemption also does not favor certain kinds of speech; the
5 “Department” exemption would presumably apply to both expressive or speech group meetings
6 as well as purely recreational conclaves. Therefore, the ordinances do not burden fundamental
7 rights and rational basis applies. The City has a legitimate interest in coordinating requests for
8 group park use. It also would be impractical for the City to apply to itself for a group use permit
9 – the City is aware of park scheduling and capabilities. The Ninth Circuit has declined to hold
10 similar city ordinances facially unconstitutional that do not regulate expressive activity on their
11 face. *See id.* at 800.

12 Plaintiffs counter that as applied to them, the group use ordinance burdens their First
13 Amendment rights because they seek to use the park for protesting and other expressive
14 purposes. Plaintiffs seek support in a recent Ninth Circuit decision declaring a Las Vegas anti-
15 tabling ordinance on Fremont Street violative of Equal Protection. In *ACLU of Nevada*, an anti-
16 tabling ordinance contained an exemption for labor-related speech. The court reasoned that the
17 law triggered the First Amendment as applied to Plaintiffs, triggering heightened scrutiny,
18 because Plaintiffs sought to use tables to facilitate dissemination of literature at Fremont Street.
19 It then concluded that the labor-related speech exemption violated the Equal Protection Clause
20 because the law facially gave preferential treatment to the expression of views on one particular
21 subject. *Id.* at 800. In reaching this conclusion, the court drew on two prior Supreme Court
22 decisions where the Court struck down labor exemptions in anti-picketing statutes. *See Police*
23 *Dep’t v. Mosley*, 408 U.S. 92 (1972); *Carey v. Brown*, 447 U.S. 455 (1980).

1 This case is distinguishable from both *ACLU of Nevada* and the two related Supreme
2 Court decisions. In all of these decisions, the courts struck down city ordinances that contained
3 exemptions expressly favoring one particular type of speech. In this case, LVMC 13.36.080's
4 exemption for Department activities is completely content-neutral. Furthermore, it would be
5 nonsensical for the City to apply to itself for a group event permit. The City presumably knows
6 of its intended use of park facilities, of competing time conflicts with such use, and whether the
7 desired event would otherwise be inappropriate. Therefore, the Department use exemption is
8 reasonable and Plaintiff's Equal Protection Challenge fails.

9 **C. Vagueness Challenge**

10 Plaintiffs also contend the group use ordinances are unconstitutionally vague. A statute
11 may be impermissibly vague in two ways: (1) "if it fails to provide people of ordinary
12 intelligence a reasonable opportunity to understand what conduct it prohibits"; and (2) if it
13 "encourages arbitrary and discriminatory enforcement." *Chicago v. Morales*, 527 U.S. 41, 56-57
14 (1999). The relevant ordinance here states that a group permit is required for any event where
15 the organizer could reasonably assume that "twenty-five or more persons might gather at a park
16 . . . to participate in or witness such event." LVMC 13.36.080. Plaintiffs argue that by
17 calculating the group size both in terms of anticipated participants and possible "witnesses"
18 present, the ordinance fails to provide notice of what conduct is prohibited and invites arbitrary
19 enforcement. Plaintiffs note that when cited for violating this ordinance, they visited Circle
20 Park in a group of two or three individuals to minister to homeless individuals already present,
21 and had no ability to predict how large a group would actually gather. They also assert that by
22 including "witnesses" in the group calculation, the ordinance lends itself to punishing protected
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25

1 expressive activities, such as group protests, as these activities are more likely to attract the
2 attention of the general public.

3 Plaintiffs' arguments are unavailing. A person of ordinary intelligence should be able
4 to estimate the size of a planned event and determine if a permit is likely to be necessary. It is
5 true that certain events are more likely to attract an audience – or “witnesses” – than others. For
6 example, events ranging from an organized softball game to a controversial political speech are
7 more likely to attract outside attention than a private barbeque. But, a group organizer is capable
8 of reasonably anticipating the amount of attention a planned event might attract. Including an
9 anticipated audience in the calculated group size advances the ordinance's legitimate purposes
10 of restricting large scale gatherings to parks that can accommodate such use and otherwise
11 managing park resources. If an event is likely to attract sufficient attention to bring the total
12 gathering in excess of twenty-five persons, then the City has a substantial interest in requiring
13 a group event permit. Otherwise, small parks with insufficient facilities could be taxed with
14 large gatherings or otherwise suitable parks could be faced with multiple, unexpected group
15 events. As the City notes, if an event holder is unsure as to size of a planned event, they are free
16 to err on the side of caution and apply for a permit. Therefore, the use of the term “witness” is
17 not unduly vague and the group use ordinance survives the vagueness challenge.

18 **D. Standing to Challenge Special Events Ordinance**

19 Plaintiffs challenge the City's special events ordinances on the same grounds they
20 challenge the group use ordinances. LVMC 13.36.132 requires a permit for any special event
21 in which twenty-five or more persons might reasonably attend. Organizers of special events
22 must acquire a general liability insurance policy and pay for any additional costs incurred by the
23 City as a result of the event. While the municipal code defines a special event as an activity with
24

1 more than twenty-five persons, the Department of Leisure Services has administratively defined
2 special events as: (1) any event with 400 or more people; or (2) any event with less than 400
3 people that also involves charging admission, requiring use of a stage or power, or has bartering.
4 (Ex. A to #54.) The Ninth Circuit has held that in considering a facial challenge to an ordinance,
5 it is appropriate to consider a “city’s authoritative interpretation of its guidelines and
6 ordinances.” *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1035 (9th
7 Cir. 2006); *see also Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (“In
8 evaluating respondent’s facial challenge, we must consider the county’s authoritative
9 constructions of the ordinance, including its own implementation and interpretation of it.”)
10 Plaintiffs admit that they have never been denied a special event permit, have never been cited
11 under the special event ordinances, and have no plans to hold a park event of more than 400
12 persons. As standing requires some showing of “injury in fact,” *Lujan v. Defenders of Wildlife*,
13 504 U.S. 555, 560, Plaintiffs lack standing to challenge the special events ordinance.

14 **III. Children’s Only Ordinances**

15 On July 12, 1999, the City set aside three parks for the use of small children, James Gay
16 Park, Ethel Pearson Park, and the Fitzgerald Tot Lot. This resolution was passed pursuant to
17 findings that these parks were being overrun by alcohol and drug use, sexual activity, sleeping,
18 and other activities inconsistent with children’s use and enjoyment. (*See* Ex. 8 to #54.) LVMC
19 13.36.070 provides that: “[N]o person over the age of twelve years, other than a parent, guardian
20 or other responsible person accompanying a child of the age of twelve years or younger, shall
21 visit, frequent, be present in or loiter around any park which is designated . . . as a children’s
22 park.” Plaintiffs seek to overturn this ordinance as violative of the First Amendment and Equal
23 Protection Clause.

1 court considered a constitutional challenge to an ordinance prohibiting anti-abortion protests near
2 churches and concluded “that the city’s interest in protecting very young children from
3 frightening images is constitutionally important; that is, the interest is ‘significant,’
4 ‘compelling,’ and ‘legitimate.’” Therefore, a government’s authority to pass restrictive laws to
5 protect the well being of children is established in the case law.

6 It is true that in a few of these cases, the courts found a significant government interest
7 in protecting children, but overturned the underlying ordinance because it was not narrowly
8 tailored. *See, e.g., Sable Comm’s of California*, 492 U.S. at 126-131; *Olmer*, 23 F. Supp. 2d. at
9 1100-1101. Therefore, even if the City has a clear significant interest in protecting children at
10 City parks, the restrictive ordinance must also be narrowly tailored. The test for whether a law
11 is narrowly tailored is whether the “regulation promotes a substantial government interest that
12 would be achieved less effectively absent the regulation.” *United States v. Albertini*, 472 U.S.
13 675, 689 (1985). “So long as the means chosen are not substantially broader than necessary to
14 achieve the government’s interest . . . the regulation will not be invalid simply because a court
15 concludes that the government’s interest could be adequately served by some less-speech-
16 restrictive alternative.” *Ward v. Rock Against Racism*, 491 U.S. 781, 799-800 (1989). In this
17 case, LVMC 13.36.080 only sets aside three parks for Children’s use, leaving open more than
18 sixty others for general use. This regulation achieves the City’s interest of providing a bare
19 minimum of parks that are likely to be entirely safe for children and is not substantially broader
20 than necessary. Therefore, the regulation is narrowly tailored and is a valid time, place, and
21 manner restriction.

B. Equal Protection Challenge

Plaintiffs also allege that the Children's ordinance offends the Equal Protection Clause because it discriminates against "childless adults." Plaintiffs note that in enjoining the homeless ordinance, the Court held that there was no rational basis between feeding a single indigent person and the heightened park crime the City sought to alleviate. They analogize that there is similarly no rational relation between childless adults and the crime documented at the three Children's parks.

Plaintiff's Equal Protection challenge must fail. However the relevant class is characterized, the rational basis test applies. Classes of childless adults, or persons over twelve years old, or adults unassociated with children, have never received heightened scrutiny under the Fourteenth Amendment. That said, the relevant distinction here is between children and adults, not childless adults and parents. A childless babysitter may attend a park with a child, while a parent is excluded if unaccompanied. Therefore, under rational basis standards, the Plaintiffs have the burden of proving there is no rational relationship between the favored class of children and the City's interest in providing a safe environment for children's park enjoyment. In this case, the City has submitted findings showing these parks were being overrun by alcohol and drug use, sexual activity, sleeping, and other activities inconsistent with children's use and enjoyment. (*See* Ex. 8 to #54.) Contrary to the Plaintiffs' contention, there is a rational relationship between addressing these ills and restricting these three parks for children's only use. Young children are simply less likely than adults or teenagers to commit crimes, and are more likely to be victimized by such crimes. The City has only designated three of the City's sixty-seven parks for Children-only use, leaving open ample alternative public fora for adult use.

1 Therefore, the Plaintiffs have not met their burden under the rational basis test and their Equal
2 Protection challenge fails.

3 **IV. Trespass Policy**

4 Finally, Plaintiffs challenge the City's policy of trespassing, or "86'ing," individuals who
5 commit crimes on public property from returning to that property for a specified period of time.
6 NRS 207.200 forbids trespass on public property. Under the City's trespassing system, City
7 Marshals may issue trespass warnings to individuals who commit crimes on City property. The
8 City's trespass system is found in the City Marshal's Field Interviews policy. Under "Trespass
9 Procedures," the policy states that marshals "May Trespass Subjects from city property for
10 criminal violations." (Ex. 4 to #51 at 8.) If a person is trespassed, a Marshal is to fill out a field
11 interview card and note the citation in the trespass log. *Id.* The City then uses that information
12 to track the entry of trespassed individuals onto public lands. Under this policy, several
13 Plaintiffs have been trespassed from various parks for six months for violating the homeless
14 ordinance. Plaintiffs contend the trespassing policy violates procedural due process and is
15 impermissibly vague.

16 In *Virginia v. Hicks*, 539 U.S. 113 (2003), the Supreme Court reviewed a trespass
17 regulation at a low income housing project and stated:

18
19 As for the written provision authorizing the police to arrest those who return to
20 Whitcomb Court after receiving a barment notice: That certainly does not violate
21 the First Amendment as applied to persons whose postnotice entry is not for the
22 purpose of engaging in constitutionally protected speech. And Hicks has not
23 even established that it would violate the First Amendment as applied to persons
24 whose postnotice entry *is* for that purpose. Even assuming the streets of
25 Whitcomb Court are a public forum, the notice-barment rule subjects to arrest
those who reenter after trespassing and after being warned not to return-
regardless of whether, upon their return, they seek to engage in speech. Neither
the basis for the barment sanction (the prior trespass) nor its purpose (preventing
future trespasses) has anything to do with the First Amendment. Punishing its

1 violation by a person who wishes to engage in free speech no more implicates the
2 First Amendment than would the punishment of a person who has (pursuant to
3 lawful regulation) been banned from a public park after vandalizing it, and who
4 ignores the ban in order to take part in a political demonstration. Here, as there,
5 it is Hicks' nonexpressive *conduct*—his entry in violation of the notice-barment
6 rule—not his speech, for which he is punished as a trespasser.

7 *Id.* at 123. Under *Hicks*, City Marshals may constitutionally issue trespass warnings to
8 individuals who commit crimes on City property.

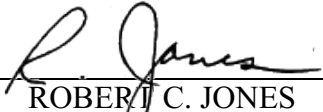
9 Plaintiffs argue that the trespass logs maintained by the Marshals indicate warnings have
10 been issued for non-criminal offenses. The record clearly reveals that each of these notations
11 identify criminal offenses. Entering property after receipt of a trespass warning is a violation of
12 NRS 207.200. Furthermore, every notation for sleeping or misuse cited by Plaintiffs occurred
13 at the Downtown Transportation Center, which has specific regulations governing conduct. For
14 example, sleeping and misuse of property are prohibited at the Transportation Center under
15 LVMC 10.84.030 and 10.84.060.

16 Under *Hicks*, the City's trespass system is constitutionally secure. Plaintiffs fail to bring
17 any evidence that the City has used the policy to abuse their constitutional rights. Therefore, the
18 Court upholds the City trespass policy.

19 CONCLUSION

20 Therefore, pursuant to the prior analysis, IT IS HEREBY ORDERED that Plaintiffs'
21 Motion for Summary Judgment (#51) is *denied*, and Defendants' Counter-Motion for Summary
22 Judgment is *granted*.

23 DATED: August 20, 2007.

24 
25 ROBERT C. JONES
UNITED STATES DISTRICT JUDGE